

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
OFFICE OF THE GENERAL COUNSEL
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Attorney for Defendant AC Transit

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTURO PACHECO,)	NO. C 07-4415 MMC
Plaintiff,)	
v.)	DEFENDANT AC TRANSIT'S
ALAMEDA-CONTRA COSTA)	ANSWER TO PLAINTIFF'S
TRANSIT DISTRICT, et al.)	<u>COMPLAINT</u>
Defendants.)	

Defendant AC Transit District, a governmental entity, answers the allegations of plaintiff's Complaint as follows:

1. In response to paragraph 1 of plaintiff's complaint, defendant lacks sufficient information and knowledge to form a belief as to the truth of the allegations contained herein, and on this basis denies the allegations and each of them.

2. In response to paragraph 2 of plaintiff's complaint, defendant admits the allegations of this paragraph, except denies the allegation that defendant's main location is Division 3, Richmond facility.

3. In response to paragraph 3 of plaintiff's complaint, defendant admits to jurisdiction.

4. In response to paragraph 4 of plaintiff's complaint, defendant

denies generally and specifically all allegations in this paragraph.

5. In response to paragraph 5 of plaintiff's complaint, defendant denies generally and specifically all allegations in this paragraph.

6. In response to paragraph 6 of plaintiff's complaint, defendant denies generally and specifically all allegations in this paragraph.

7. In response to paragraph 7 of plaintiff's complaint, defendant denies generally and specifically all allegations in this paragraph.

Factual Allegations

8. In response to paragraph 8 of plaintiff's complaint, defendant lacks sufficient information and knowledge to form a belief as to the truth of the allegations contained in this paragraph, and on that basis, denies each and every allegation contained therein.

9. In response to paragraph 9 of plaintiff's complaint, defendant admits issuance of a "Right to Sue Letter", but lacks sufficient information and knowledge to form a belief regarding remaining allegations and denies them on this basis.

Demand for Jury Trial

Defendant demands a trial by jury.

Affirmative Defenses

1. Defendant avers that under the principles of comparative negligence, the negligence of plaintiff and or other parties, persons, entities or organizations must be taken into consideration in appropriately allocating negligence with respect to whatever tort-feasor is found to be negligent, if any.

2. Defendant alleges that plaintiff's alleged causes of action are barred by the provisions of Government Codes Sections 815, 815.2, 815.4, 818.8, 8.20.2, 8.208, 821.6, 830.6, 835, 835.2, and other code sections as may be indicated at a later time.

3. Defendant alleges that plaintiff was negligent in and about the

1 matters alleged in the complaint and that said carelessness and negligence on
2 plaintiff's own part proximately contributed to the happening of events relevant to
3 plaintiff's allegations, and to the injuries, and the loss and damage complained
4 of, if any there were.

5 4. Defendant and its employees and former employees are immune
6 from liability under Government Code Sections 820.2 and 820.8 from all acts and
7 omissions within the discretion of said persons and entities. Such discretionary
8 acts include, but are not limited to, the setting, establishment, issuance and
9 promulgation of management policies. Said policies include, but are not limited
10 to, all policies pertaining to the selection, training, job assignment, suspension,
11 discharge, supervision, instruction, direction and control of any and all
12 employees of defendant.

13 5. Defendant has governmental immunity and is not liable for injuries,
14 damages or causes of any kind, except as expressly provided by statute. Such
15 governmental immunity also applies as to all acts and omissions of any
16 employee or former employee acting within the course and scope of his or her
17 employment with AC Transit.

18 6. Plaintiff has failed to take reasonable action to mitigate his
19 damages, if any there be.

20 7. Defendant is not liable to plaintiff as each cause of action asserted
21 against defendant fails to state facts sufficient to constitute a cause of action
22 against this answering defendant.

23 8. Plaintiff's causes of action are barred by the doctrine of estoppel

24 9. Plaintiff's causes of action are barred by the doctrine of waiver.

25 10. Plaintiff's causes of action are barred by the doctrine of ratification.

26 11. Plaintiff's Complaint is barred by various statutes of limitations.

27 12. Plaintiff's causes of action are barred by plaintiff's failure to exhaust
28 his administrative remedies.

1 13. Plaintiff's causes of action are barred by plaintiff's failure to exhaust
2 his contractual remedies.

3 14. Plaintiff's causes of action are barred by plaintiff's failure to exhaust
4 and/or perform the statutory prerequisite to filing them.

5 15. Plaintiff's causes of action are barred by the doctrine of unclean
6 hands.

7 16. Plaintiff's causes of action are barred by the exclusive remedy
8 doctrine of the Workers' Compensation law.

9 17. Defendant is exempt from pre-judgment interest pursuant to Civil
10 Code Section 3291.

11 18. Plaintiff's Complaint is vague and uncertain, and as such does not
12 identify or describe the underlying facts in sufficient detail for defendant to
13 determine fully what defenses to this action may exist. Defendant presently lacks
14 sufficient information to determine all affirmative defenses that it may have to the
15 allegations of the Complaint and therefore specifically reserves the right to
16 supplement or modify these affirmative defenses as additional information
17 regarding plaintiff's allegations is required.

18 19. Defendant states that the injuries and damages plaintiff complains
19 of, if any, resulted from the acts and/or omissions of others, and without any fault
20 on the part of this answering defendant.

21 20. Defendant states that all actions taken were undertaken in good
22 faith and with reasonable belief that said actions were valid, necessary and
23 constitutionally proper, thus, this defendant is entitled to qualified immunity.

24 21. Defendant alleges that defendant's acts were privileged under
25 applicable statutes and case law.

26 22. Defendant alleges that plaintiff has failed to allege and/or has not
27 stated facts sufficient to show an affirmative link between defendant and the acts
28 which allegedly violated plaintiff's rights.

1 23. Defendant alleges that neither plaintiff's complaint nor any of the
2 alleged claims for relief or "causes of action" therein state facts sufficient to
3 constitute a claim for relief against defendant.

4 24. Defendant alleges that its conduct and/or the conduct of its
5 employees and/or agents was privileged and/or justified.

6 25. Defendant alleges that all actions undertaken by it regarding and
7 relating to plaintiff were in good faith with reasonable belief that said actions
8 were valid, necessary, and constitutionally and statutorily proper.

9 26. Defendant alleges that it is entitled to statutory and/or common law
10 immunity and thus is not liable for damages as alleged in plaintiff's complaint.

11 27. Defendant alleges that plaintiff expressly or implied consented to
12 the matters of which he now complains.

13 28. Defendant alleges that the claims set out in plaintiff's complaint,
14 and each cause of action therein, are barred due to plaintiff's failure to comply
15 with applicable requirements set forth in the California Government Tort Claims
16 Act.

17 29. Plaintiff's Complaint and each and every cause of action contained
18 therein, is limited and/or barred by the terms of California Government Code
19 Sections 895-895.8.

20 30. Defendant alleges that plaintiff's Complaint does not state facts
21 sufficient to constitute a cause of action and that it is barred by plaintiff's failure
22 to comply with applicable notice and claim provisions of California Government
23 Code Sections 905, 910, 910.2, 911.2 et seq., 945.6.
24 therefore plaintiff's claims are barred.

25 31. If defendant is found to be negligent, which is expressly herein
26 denied, the liability of defendant is limited by reason of California Civil Code
27 Section 1431 et seq.

28 32. Defendant alleges that plaintiff was aware of the names of

1 defendant's employees and/or agents involved in the alleged incident at the time
2 plaintiff filed is Complaint. Therefore, plaintiff is barred from suing such
3 individuals as Doe defendants, or otherwise, in this action.

4 33. Any failure or deficiency of the reasonable accommodations
5 offered and provided to plaintiff was due to plaintiff's own failure to engage in the
6 interactive process, as required by applicable laws.

7 WHEREFORE, Defendant ALAMEDA-CONTRA COSTA TRANSIT
8 DISTRICT prays as follows:

- 9 1. That plaintiff take nothing from defendant by his Complaint;
10 2. That Defendant be awarded judgment in this action:
11 3. That Defendant be awarded costs of suit incurred herein; and
12 4. That Defendant be awarded such other relief as this Court deems
13 proper.

14 Dated: September 17, 2007

15 KENNETH C. SCHEIDIG
16 GENERAL COUNSEL

17 By: /S/
18 Cathleen A. Wadhams
Attorney for Defendant

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25 (S:\Cases\Pacheco\Ans to Complaint)
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